

# COVERAGE AGREEMENT COMMITTEE

September 16, 2004

## Items presented for consideration

1. Hazardous Materials Handling: Several members have reported to staff that the State has shifted the responsibility for hazardous waste cleanup and disposal to counties or combinations of counties.
  - 1.1. The employees would be covered under Workers' Comp.
  - 1.2. Liability coverage for the acts of these employees is **not** excluded in the coverage agreement. However, General Coverage Exclusions, H, excludes
    - 1.2.1. **Bodily Injury, Personal Injury, Property Damage** or any type of damage whatsoever, including the loss of use or any other type of loss or damage caused by the release, discharge or dispersal of **Pollutants** anywhere, anytime in any way, whether accidental or intentional, sudden, intermittent or continuous and regardless of ownership or location, EXCEPT this exclusion does not apply as provided in the Liability Section for **Bodily Injury or Property Damage** arising out of heat, smoke or fumes from a hostile fire.
    - 1.2.2. If the HazMat team carries pollutants it has cleaned up, has a wreck and accidentally releases those pollutants, the claims would fall under this exclusion.
- 1.3. **Recommendation:** add a second "EXCEPT this exclusion does not apply to the official activities of the Member's hazardous materials work unit."
2. Coverage for pesticide and herbicide application: Coverage for this activity is found in the definition of "**Pollutants**"
  - 2.1. means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, sounds, alkalis, chemicals, liquids, solids, gases, thermal pollutants, waste and all other irritants or contaminants. "Waste" includes materials to be recycled, reconditioned or reclaimed. However, for purposes of the general liability coverages provided in this agreement, "Pollutants" does not include herbicides or pesticides.
  - 2.2. Problems: refers to general liability, therefore E&O and auto liability coverages are excluded.
  - 2.3. **Recommendation:** Substitute "member" for "the general liability" in the definition of Pollutants. In Limits of Coverage, 3., Liability, (page 4) insert a sublimit of \$50,000 for Herbicide and Pesticide Application.

3. Cyber Risk: Coverage for risks related to computers, networks, internet

3.1. Many commercial insurance policies now exclude cyber risks. Some pools have started excluding this coverage. Attached is an endorsement to exclude losses caused by viruses and “hacking” events.

**3.2.Recommendation:** UCIP should adopt this endorsement. Losses caused by viruses and hacking are preventable.

4. Property Coverage section, exclusion 20: this exclusion is directed at the Y2K exposure and should be deleted.

**4.1.Recommendation:** Delete exclusion 20 in the Property section.

5. Limited Coverage for Land Use: Some members have asked for additional coverage for land use suits. The only way I think we should expand is by a paid endorsement. An example of one I used in New Mexico is attached on Page 4. Please review the wording on this. I’m having trouble with the total available, which would be \$125,000.

**5.1.Recommendation:** Recommend offering the endorsement to members.

6. Endorsement #2: Change the cite on the UGIA to 63-30d-101

## **EXCLUSION OF LOSS TO AND LOSS OF USE OF DATA, COMPUTER HARDWARE AND SYSTEMS**

### **Random Attack – Hacking Event or Computer Virus**

The Pool will not pay for direct physical loss or damage caused by a random attack by a hacking event or computer virus. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

*Random Attack* means the widespread attack, by a hacking event or computer virus, directed against the computer systems, software, data, or telecommunications systems of multiple organizations or persons who are not part of you, rather than solely at your computer systems, software, data, or telecommunications systems. Such attack is intended for the purpose of fraud, nuisance, or malicious tampering or destruction.

*Hacking Event* means an attack that allows unauthorized access or use of a computer or telecommunications system by electronically circumventing a security or procedure.

*Computer Virus* means a piece of code that is maliciously or fraudulently introduced into a computer or telecommunications system. Once introduced, the virus may destroy, alter, contaminate, or degrade the integrity, quality, or performance of data or any computer application software, computer network, or computer operating system and related software.

**This exclusion does not apply to any specific attack to your computer equipment.**

*Specific Attack* means the intentional attack, by a hacking event or computer virus, directed solely at your computer system, software, data or telecommunications system. Such attack is intended for the purpose of fraud, nuisance, or malicious tampering or destruction.

### **Denial of Services**

The Pool does not cover any loss of earnings or extra expense caused by or resulting from denial of services.

*Denial of Services* means an intentional specific or random attack on your computer system or telecommunications system for the purposes of nuisance, sabotage, malicious tampering which has the effect of:

- Depleting system resources available through the Internet to authorized external users of your computer system or telecommunications systems; or
- Impeding Internet access of authorized external users to your computer system or telecommunications system.

### **Limited Coverage for Land Use Matters**

It is hereby agreed and understood this **Agreement** provides \$25,000 defense only coverage for liability arising out of the principles of eminent domain, condemnation proceedings or claims, inverse condemnation or claims, and regulatory taking by whatever name called, whether that liability accrues directly against the **Insured** or by virtue of any agreement entered into, by or on behalf of the **Member**. Claims alleging civil rights violations arising out of any of the listed proceedings are excluded.

However additional defense coverage will be provided by this endorsement in the amount of \$100,000/\$100,000 annual aggregate per **Member** for claims in inverse condemnation. The endorsed amount applies to defense costs of the Member only and cannot be applied to pay a settlement, plaintiff's costs or legal fees. A **Member** that uses in-house counsel may also apply for reimbursement of costs (legal fees) at a rate not to exceed \$100.00 per hour.

The additional premium for this coverage is \$10,000 annual.

Coverage under this endorsement is provided subject to payment of the additional contribution to the following members:

Retroactive Date: January 1, 2005

Subject otherwise to all terms, clauses and conditions of this policy.

January 1, 2005

